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Supreme Court, U.S.
FILED
FEB 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

J. STANLEY TYRAKOWSKI, Appellant,

V.

WLADYSLAWA BARR TYRAKOWSKI, Appellee.

ON APPEAL FROM CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE.

JURISDICTIONAL STATEMENT

J. STANLEY TYRAKOWSKI
2800 Westbrook Ave
Los Angeles, CA 90046
(213) 876-5902

Appellant in Propria Persona

February, 1987.

QUESTIONS PRESENTED.

I. DOES THE COURT OF APPEAL HAVE JURISDICTION OVER AN UNTIMELY FILED CROSS - APPEAL ?

If the following facts existed:

1. Appellant's notice of appeal was filed timely in compliance with Cal. Rules of Court;

2. Appellee's notice of cross-appeal was filed untimely in violation of Cal. Rules of Court;

3. Appellee's cross-appeal was dismissed by an unanimous decision of the entire panel of the appellate court, consisting of three justices;

4. The cross-appeal was reinstated by a decision of one associate justice, on appellee's motion to vacate dismissal of cross-appeal and rein -

state cross-appeal, supported by pleadings of misleading information and omission of applicable rules of court.

5. The above violations have been brought to the attention of the reviewing court by appellant's opposing pleadings and letters to court.

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JURISDICTIONAL STATEMENT

J. Stanley Tyrakowski, the appellant, appeals from final decision (order) of the California Court of Appeal Second Appellate District, Division One, entered August 15, 1986 and reinstating appellee's cross-appeal.(Appendix[1/]-2; Exhibit[2/]-B) Decision has been petitioned for review to the Supreme Court of California and review was denied on Oct. 30, 1986. (A-3;Ex-C) Decisions as applied violate the appellant's individual rights by depriving him of equal protection of the law as guaranteed by the Fourteenth Amendment of Constitution of the United States.

1/ Hereafter "A"

2/ This document will cite appendixes "A thru G" which were attached to application for extension of time, granted by the U.S. Supreme Court Order No. A-513. Appendixes are filed with clerk's office of U.S.C and will be cited as "Ex".

DECISIONS (ORDERS) BELOW

The conflicting decisions (orders) which appear in the appendixes and exhi - bits, were rendered by the same appallate court. One, by an unanimous decision of the entire panel of the appallate court, dismissed the cross-appeal on July 31,1986. (A-1;Ex-A) The other, decision (order) vacated and reinstated cross-appeal which was rendered by one associate justice only on August 15, 196. (A-2;Ex-B)

The Supreme Court of California de - nied to review appellant's petition of the decisions of the Court of Appeal, by an order filed October 30, 1986.(A-3;Ex-C)

The Notice of Appeal to the Supreme Court of the United States, was filed on December 5, 1986 in the Court of Appeal, Second Appellate District, Division One. (Ex-F)

JURISDICTION

On November 7, 1986 an attempt was made by the appellant to file a petition for rehearing with the Supreme Court of California. The clerk's office refused to accept said petition for filing.

In a letter to Chief Justice of California dated November 10, 1986, appellant raised the federal question that denial of petition for review, sets the condition precedent to review by the United States Supreme Court of Court of Appeal decision (order) based upon precedent case, e.g. Banks V. California(1969) 395 U.S. 708. (Ex-D & E)

The jurisdiction of this Court is invoked under 28 U.S.C. #1257 (2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment:

> " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The following California Statutes and Rules of Professional Conduct of the State Bar of California, too lengthy to set verbatim here, may be found in the Appendix as follows:

Code of Civil Procedures	Sec.663	A-5
	Sec.663a	A-5
	Sec.909	A-6
Rules of Professional Conduct of the State Bar of California	Rule 1-100	A-7

STATEMENT OF THE CASE

A. STATED FACTS PER RECORDS IN SUPERIOR COURT, CASE No. D 119309

Appellant, J. Stanley Tyrakowski in 1960 has been awarded a divorce in his first marriage as a cross-complainant, however, suffered financial consequencies because of his counsel malpractice, who did not oppose the content of a false - fied judgment as submitted for judge signature.

In 1966 appellant and appellee executed a prenuptial agreement prior to entering into a second marriage for both of them. This marriage has ended May 5, 1983. The appellee left the appellant during his absence, removing and illegally taking posession of his separate property. On June 14, 1984 appellant after his futile efforts of settlement and conciliation filed and served a " Petition " for

dissolution of marriage including as separate pleadings; (1) Prenuptial Agreement; (2) Tabulation of Separate Income and Contributions to Daily Expenses; (3) Complaint. On September 6, 1984, appellee filed " Response " contesting the validity of the premarital agreement.

On May 17, 1985 appellant filed motion for summary judgment supported by extensive documentation. Summary judgment was denied on July 2, 1985, based upon statement number 8 and 10 of the appellee declaration, executed on June 16, 1985 and drafted by the appellee attorney Samuel J. Wells. (A-9) Trial court findings determined that said statements made under penalty of perjury were falsehood. (A-8) Perjury was further confirmed by the appellee testimony on cross - examination at the trial.

The 10 days trial started on Nov. 14, 1985 and was interrupted due to appellant's emergency hospital admittance, because of his severe attack of unstable angina. The trial resumed January 6,1986.

Appellant and appellee filed post trial motions to vacate judgment and enter different judgment on March 20 and March 28, 1986 respectively. Both motions were summarily denied on April 14, 1986 by the trial judge.

Copy of pleadings request for statement of decision filed on January 21, 1986, filed by attorney Wells was not served upon the appellant. (A-10)

The attorney Well's submitted judgment, upon his own request was entered May 6, 1986 in spite of appellant's opposition as not being in compliance with trial court tentative decision of

Jan. 13, 1986 (A-8) and court filed on March 6, 1986 Statement of Decision.(A-11)

Governed by procedural requirements set by posttrial motions, appellant has filed on May 12, 1986 a timely notice of appeal from parts of judgment.3/

On July 2, 1986 appellee, has filed OSC requesting $ 10,000 in attorney's fees and $ 5,000 in cost on appeal. The request has been denied trial judge, court order of July 16, 1986. (A-4)

3/ From part of judgment ordering appellant to pay appellee $ 60,000 for her " personal efforts and labor " and $ 20,000 in appellee's legal fees. The trial court did not consider appellant's submitted evidence, that the appellee's engineering position and the acquired assets are the results of appellant's guidance, advice and help, which are the direct consequences of appellant's personal efforts and labor, However, the trial court decision was improper in that efforts and labor were performed in mutual cooperation as husband and wife and therefore such services are voided by courts for lack of consideration on the theory they should be performed by husband and wife without compensation.

On July 3, 1986 appellee has filed an untimely cross-appeal. 4/

B. STATED FACTS PER RECORDS IN COURT OF APPEAL, CASE No. 2/1 B020735

On July 15, 1986 appellant has filed motion to dismiss cross-appeal. July 30, 1986 appellee filed opposition to motion to dismiss cross-appeal. On July 31, 1986 by an unanimous decision of the entire panel the appallate court dismissed the cross-appeal. (A-1;Ex-A)

August 1, 1986 appellant has filed a letter in the court of appeal, addressed to the Presiding Justice of the Appallate Court, regarding the misconceptions in appellee opposing pleadings and copy mailed to appellee's attorney. (A-12)

4/ From part of judgment that the premarital agreement was valid and not voidable by the appellee as stated by the trial court findings and court filed Statement of Decisions.

On August 6, 1986 appellee has filed a motion to vacate dismissal of cross - appeal and to reinstate cross - appeal. August 11, 1986 appellant filed opposi - tion to appellee's motion " to vacate and reinstate." August 15, 1986 appellee's motion to vacate and reinstate cross - appeal was granted by one Associate Justice of the Appallate Court.(A-2;Ex-B)

On September 15, 1986 appellant has filed petition for review in the Supreme Court of California, from Court of Appeal decision (order) of August 15, 1986. Appellee filed an " Answer and Request for Fees " on October 3, 1986. Appellant's " Reply " was filed October 10, 1986. The Supreme Court of California denied appellant's Petition for Review by an order filed October 30, 1986.(A-3;Ex-C)

On November 10, 1986 appellant

mailed a letter to the Supreme Justice of California. (Ex-D) Appellant received a reply in a letter dated November 19, 1986 from the office of the Clerk of the Supreme Court of California. (Ex-E)

On Dec.5, 1986 appellant has filed Notice of Appeal to the Supreme Court of the United States in the Court of Appeal. (Ex-F) On January 8, 1987 appellant has mailed application for extension of time to docket a case on appeal, said application has been granted by the U.S. Supreme Court Order No. A-513, extending time for docketing an appeal to and including February 27, 1987.

Throughout the course of this litigation, appellee's attorney Samuel J. Wells repeatedly abused the legal procedures, too numerous for presentation in this document. In (3) three instances

statements made under penalty of perjury are contrary to facts in records and transcript of court proceedings. Mr. Wells declarations were executed and filed on:

September 18, 1984; September 20,1984
May 31, 1985; June 3, 1985
April 7, 1986; April 9, 1986

In essence trial court rewarded attorney Samuel J. Wells for his misconconduct and violations of law.5/

5/ The trial court was informed of attorney Wells misconduct and was in posession of evidence (records) proving offenses of perjury, nevertheless the trial court ordered the appellant to " CONTRIBUTE THE SUM OF $ 15,000 IN APPELLEE'S FEES, AND IN ADDITION THE SUM OF $ 1,750 AS TO THOSE MATTERS DEFERRED TILL TIME OF TRIAL FOR SANCTIONS, IN THE TOTALSUM OF $16,750" The sum of $16,750 has been arbitrary increased to $ 20,000 without any material findings and justificationin the court filed Statement of Decision. Further sanctions have been imposed upon the appellant in the amount of $ 1,300, whereby the appellee attorney was not even reprimanded for his violation of law. This all was done to discourage appellant from resisting this malicious prosecution, including delay tactics in issuing court order to permit the appellant to deposit statutory undertaking on appeal.

THE QUESTIONS ARE SUBSTANTIAL

The appellant filed motion to vacate on March 20, 1986, and the appe - llee on March 28, 1986. Those motions were filed under statute of CCP Sec.663. Both motions were summarily denied by the trial court order of April 14, 1986.

- The CCP Sec.663a permits the filing of motion to vacate before the entry of judgment. (A-5) The denial of motion to vacate, determined that under Cal. Rules of Ct.3(b):

> " ... the time for filing the notice of appeal from judgment is extended for all parties until the earliest of 30 days after entry of order denying the motion to vacate; or 90 days after filing the first notice of intention to vacate; or 180 days after entry of judgment."

To avoid any pitfalls, when a motion to vacate a judgment and enter another and different judgment was filed and denied, one shall proceed as follows:

Determine the earlier of 180 days after a judgment or 90 days after filing the notice of intention to vacate, and enter the earlier on calendar; If the motion is denied before the date then entered on the calendar, determine the earlier of the calendared date or the date 30 days after entry of the order of denial. The earlier of those two dates should be entered on the calendar and any inapplicable dates expunged.

Judgement entered: May 6, 1986
Earlier 180 days: November 3, 1986
Filing " motion to vacate ":March 20,1986
Earlier 90 days: June 18, 1986
Motion to vacate denied: April 14, 1986
Earlier 30 days after denial:May 14,1986

The time limit for filing notice of appeal under Cal. Rules of Ct.3(b) is May 14, 1986.

On May 12, 1986 appellant filed a timely Notice of Appeal in the Superior Court.

Cal. Rules of Ct.3(c) Cross - Appeal) states:

> " When a timely notice of appeal is filed under subdivision (a) of Rule 2 or under subdivision (a) or (b) or Rule 3, any other party may file a notice of appeal within 20 days after mailing of notification by the superior court clerk of such first appeal or within the time otherwise prescribed by the applicable subdivision, whichever period last expires...."

Under Cal. Rules of Ct.3(c), notice of cross - appeal must be filed within 20 days after superior court clerk mails notice of appellant's appeal. Rule 3(c) extends time to file a notice of cross - appeal, it does not shorten it. Under this rule also, a cross-appealing party may proceed under the applicable time limit for the initial appeal, if it expires later than the limit for cross - appeal.

The extended time limit to file

a cross-appeal is 20 days after May 12, 1986, which is on or about June 1, 1986.

The other option to file a timely cross-appeal would be the applicable time limit for the initial appeal, which in this case is May 14, 1986.

From the above two dates it is obvious that period that last expires is June 1, 1986 date.

The time limit for filing a timely cross-appeal is June 1, 1986. The appellee filed a notice of cross-appeal on July 3, 1986 almost one month late.

> " As with initial appeal a notice of cross-appeal is jurisdictional and must be filed in timely fashion. A cross-appeal filed even a day late will be dismissed."
> Kapelus v. United Title Guaranty Co. (1971) 15 CA3d 648, 651; 93 CR 278.

> " When the reviewing court does not have jurisdiction it cannot consider the merits of the cross-appeal, and cross-appeal must be dismissed."
> Estate of Hanley, (1943) 23 C2d 120; 142 P2d 425.

Appellee failed to file a timely cross-appeal, court of appeal had no jurisdiction, cross-appeal must be dismissed.

To further and deliberately confuse the issue, appellee's attorney on August 6, 1986 filed a motion to vacate dismissal of cross-appeal and to reinstate cross-appeal and a motion for fees and sanctions. The appellee attorney knew exactly the implication in filing appeal and cross-appeal, when posttrial motions are involved, at the time when he has filed motion to vacate and reinstate cross-appeal on August 6, 1986.

A copy of a letter to Presiding Justice of the Court of Appeal, dated July 31, 1986,(A-12) which has been filed on August 1, 1986 with the clerk's office of the court of appeal, has been mailed

July 31,1986 to the appellee's attorney. Said letter explains, in step by step fashion how to calendar time to appeal and cross-appeal under Cal. Rules of Ct. 3(b) and 3(c), when posttrial motions to vacate judgment and their denial are involved.

The above stated facts, make it conclusively clear that the only reason for appellee attorney to file motion to vacate and reinstate, was to mislead the court and manipulate its decision, by providing incorrect information.

The appellee's cross-appeal was dismissed by an unanimous decision of the entire appellate court panel, on July 31, 1986 by an order, quote: " Motion granted cross-appeal dismissed " without expre - ssly indicating that it is without prejudice. Therefore, the cross-appeal has

been dismissed with prejudice. Motion granted with " prejudice " denies the right to file for another cross-appeal, and for that matter to file for reinstatement.

This being a case, where jury trial was not a matter of right to the appellant, CCP Sec. 909 permits the court of appeal, to take additional evidence for " the purpose of making the factual determinations or for any other purpose in the interest of justice."

Considering all the stated facts above, one has to conclude that the court of appeal being informed by the appellant's pleadings and letter (A-12) of the facts acted with prejudice against the appellant when reinstating the cross-appeal.

The reinstatement of cross - appeal is unlawful and in contradiction

to the majority decision of the entire panel of the Appellate Court.

The appellant's petition for review of the decision of the Court of Appeal to the Supreme Court of California was not reviewed. Thus, the court of appeal decisions (orders) were neither affirmed, reversed or modified by the order of the Supreme Court of California. Instead, appellant's petition was denied, on October 30, 1986.(A-3;Ex-C)

> " If the court of appeal opinion (decision) conflicts with the law as stated by the supreme court, a denial of a petition is not to be taken as agreement with court of appeal opinion (decision), it is not a tacit overruling of itself by the supreme court. Denial of the petition means only the interest of justice do not require the supreme court to exercise its power in that particular case."
> People v. Triggs (1973) 8 3Cd 884, 890; 106 CR 408, 412;

This case is a classic example where all of the (3) prerequisite requirements are present, for the Supreme Court of California to order a review of a decision of Court of Appeal, as stated in Cal. Rules of Ct.29(a), which rule relates to the Supreme Court of California.

(1) Does the court of appeal have jurisdiction over an untimely filed cross-appeal ? This certainly represents a settlement of important question of law.

(2) The unanimous decision to dismiss an untimely cross-appeal, which is a jurisdictional decision can not be vacated and reinstated by the very fact that court of appeal was without jurisdiction of the cause.

(3) The overruling of the original jurisdictional decision rendered by the entire panel of the court of appeal

by the decision (order) of one justice, lacks the concurrence of required majority of qualified justices.

The following questions are raised:

(1) Does the Supreme Court of California, have the right to consider that this case, in the interest of justice do not require to exercise its power ?

(2) Has the Supreme Court of California abused its discretion, or even violated the law, by not having reviewed the appellant's petition ?

Those certainly are SUBSTANTIAL QUESTIONS to be decided and resolved by this Court.

CONCLUSION

For reasons stated in this Jurisdictional Statement document, the Supreme Court of the United States, has to conclude that, the appellee's cross - appeal was filed untimely and under the law of Statutes, California Rules of Court and applicable precedent cases cited, the Court of Appeal, Second Appallate District Division One, had no jurisdiction over the appellee cross-appeal.

THE UNANIMOUS DECISION (ORDER) OF THE ENTIRE APPELLATE COURT PANEL OF JULY 31, 1986 MUST BE UPHELD, AND THE AUGUST 15, 1986 DECISION (ORDER) OF ONE JUSTICE SHALL BE REVERSED AND VACATED.

At the crux of due process is the beief that judicial process being based upon combative and adversary

proceedings has some shortcomings and inadequacies. The process itself encourages some individuals resort to lies, which because of nature and human character are preferable in acceptance. Misrepresented facts and incorrect information presented with flair are more atractive than plain truth and bare facts.

Because, of the appellee's attorney experience and throughout knowledge of the legal process and trial tactics, he was capable to manipulate decisions of courts below, by submitting pleadings of suitably prepared content of misleading and incorrect information.

The courts being overburden with litigations, try to dispose expeditiously of backlog of cases by striving for a compromise, sometime at the expense of one of the litigants and not always in the

interest of justice.

Point in case, are the proceedings in courts below, where the appellant represented himself in propria persona, and was denied the equal protection of the laws, guaranteed by the United States Constitution, Fourteenth Amendment.

This litigation is completely unjustified and senseless and is perpe - tuated by an ungreatfull and greedy appellee and her scheming attorney, and needlessly occupies the courts only.

The legal action did not benefit either of the litigants, the real and only beneficiary being the appellee's attorney, who by his misconduct, and the abuse of legal procedures maliciously prosecuted the appellant, violating the law and the Rules of Professional Conduct of the State Bar of California.

Therefore, this highest Court in the Land shall exercise its power and act summarily on the merits of this case solely on the basis of this jurisdictional statement and put an end to this litigation.

Respectfully submitted,

J. Stanley Tyrakowski

J. STANLEY TYRAKOWSKI,
Appellant in propria persona
2800 Westbrook Ave
Los Angeles, California 90046
(213) 876-5902

February 1987.

PROOF OF SERVICE BY MAIL

I am a citizen of the United Staes and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: P.O.Box 600, Beverly Hills, California 90213. On this date, March 16, 1987, I served the within;

JURISDICTIONAL STATEMENT in re; " J. Stanley Tyrakowski, Appellant vs. Wladyslawa Barr Tyrakowski, Appellee " in the Supreme Court of the United States, October Term, 1986, No.....and separate appendix thereto:

on persons interested in said action by placing 3 true copies thereof enclosed insealed envelopes with first class postage prepaid, in the United States post office, by certified mail at Los Angeles, California, addressed as follows:

LAW OFFICES OF SAMUEL J. WELLS
11661 SAN VICENTE BLVD., SUITE 1010
LOS ANGELES, CA 90049

All parties required to be served have been served.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.
Executed on March 16, 1987, at Los Angeles California.

Thomas Stockfisch
Thomas Stockfisch